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MAR 2 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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IN REPLY REFER TO:
1800D5

Margaret L. Tobey, Esq.
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
1333 New Hampshire Avenue, N.W.
Suite 400
Washington, D.C. 20036

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Dear Ms. Tobey:

This is in reference to the petition for rule making which you submitted on behalf of Communication Properties, Inc. ("CPI"), requesting the reallocation of vacant TV Channel 40 from Portland to Beaverton, Oregon, as the community's first local television service. Beaverton is located within ten miles of Portland and is subject to the Commission's freeze on TV allotments pending the ongoing ATV inquiry. See Advanced Television Systems and Their Impact on the Existing Television Broadcast Service ("Freeze Order"), 52 Fed. Reg. 28346, published July 29, 1987. Therefore, you also seek a waiver of the freeze.

You state that acceptance of CPI's petition will serve the public interest because Channel 40 could provide Beaverton, a community of almost 59,000 persons, with its first local television transmission service. You acknowledge that Beaverton receives both commercial and noncommercial educational television service from stations licensed to Portland and Salem, Oregon, and Vancouver, Washington. However, you argue that the residents would be better served in news, public affairs, and entertainment programming by its own local station. Further, you state that the reallocation of Channel 40 to Beaverton will not likely impact any future ATV allotments in the Portland area since there is no shortage of available channels and, in any event, the Commission is not obligated to accept an application for a construction permit until the ATV freeze is lifted.

As stated in the Freeze Order, no petitions to amend the Table of Allotments or applications for construction permits for new stations will be accepted for communities within the minimum co-channel separation distance of Portland and other metropolitan areas in order to preserve spectrum options. Further, those rule making requests which were pending before the Commission when the Freeze Order was adopted were completed but the filing of construction permit applications has been frozen. Exceptions to the freeze, which are decided on a case-by-case basis, are limited to requests by existing stations and those seeking noncommercial educational channels.

We find that CPI has not presented a compelling reason why the freeze should be waived and a rule making initiated. The request falls within neither of the categories for waiver. While the provision of local television transmission service to as many communities as possible is a priority of the Commission, Beaverton presently enjoys reception service from one noncommercial educational station and eight commercial television stations licensed to Portland and Salem, Oregon, and Vancouver, Washington. Further, you provide no evidence that a Channel 40 Beaverton station will provide service to any presently unserved or

underserved areas. Finally, since the filing of applications is also frozen, we do not believe it an efficient use of limited Commission resources to conduct a rule making for a channel allotment which cannot be applied for at this time.

Accordingly, the petition for rule making filed on behalf of Communications Properties, Inc., to reallocate Channel 40 from Portland to Beaverton, Oregon, is not acceptable for rule making at this time. Should interest remain in the reallocation once the Commission lifts the freeze on channel allotments, CPI may resubmit its request.

Sincerely,

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Enclosure

bcc: Dockets Branch, via Office of the Secretary, Room 222 (2 copies)
(filed 2/17/93)

LKShapiro:AB:PRD:MM
(2/23/93)
shapiro, beaverton